International Brotherhood of Teamsters, Local 166, AFL–CIO *and* Nadine Penrod *and* Robert Penrod *and* John P. Burnham *and* Clement Wierzbicki and Dyncorp Support Services Operations, Fort Irwin Division, Party to the Contract. Cases 31–CB–8333, 31–CB–8683, and 31–CB–8938

April 26, 2001

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

On March 23, 1999, the National Labor Relations Board issued its Decision and Order in the above-captioned case.[1] The Board found that the Respondent, Teamsters Local 166, unlawfully failed to inform Charging Party John Burnham that, as a nonmember of the Union, he had the right under *Communications Workers v. Beck*[2] to object to having his union dues and fees spent for nonrepresentational activities and that, if he objected, he would be charged only for representational activities. The Board also found that the Respondent unlawfully failed to inform Charging Parties Robert Penrod, Nadine Penrod, and Clement Wierzbicki in a timely fashion that as *Beck* objectors they would not be charged for nonrepresentational activities, the percentage by which their dues and fees would be reduced, the basis of the calculation, and that they would have an opportunity to challenge the Respondent's determination. Finally, the Board found that, even after the Respondent provided certain information to the other Charging Parties, it unlawfully failed to provide some of that information to Nadine Penrod. The Board found that by this conduct, the Respondent violated its duty of fair representation and Section 8(b)(1)(A) of the Act.

The Board found, however, that the Respondent did not act unlawfully by failing to inform Burnham, who was not a *Beck* objector, of the percentage of union funds that were spent on nonrepresentational activities during the previous year, and thus, the percentage by which dues and fees would be reduced for objectors. The Board also found that the information belatedly given Wierzbicki and Robert Penrod was adequate. Thus, the Board found that the Respondent had provided copies of an auditor's worksheet, which showed the Respondent's major categories of expenditures and the percentages of each category and of total spending which the Respondent attributed to representational and nonrepresentational activities. The Respondent also provided copies of the auditor's opinion letter and a letter describing the provisions under which the objectors could challenge the Respondent's calculations and stating that any challenged amounts would be placed in escrow pending resolution of the challenge. The Board rejected arguments that certain items referred to in the auditor's worksheet were excessively vague and imprecise. It also found that the Respondent was not required to furnish certain schedules and a "breakdown" referred to in the auditor's worksheet, to identify its affiliates that received the sums referred to as "per capita," or to provide a breakdown of those entities' expenditures.

The Charging Parties petitioned for review in the D.C. Circuit. On February 22, 2000, the court of appeals granted the petition for review.[3] The court held, contrary to the Board, that the Respondent was required to inform new employees and "financial core" payors such as Burnham of the percentage reduction in dues and fees for *Beck* objectors.[4] The court also held that the notice to objectors was inadequate. It noted that although the Respondent identified its general categories of spending, its disclosure did not include a separate list of union activities, the schedules and "breakdown" mentioned in the auditor's report, or an opportunity to obtain a detailed explanation of how the Respondent calculated its expense allocations.[5] The court also held that the Respondent was required to inform the Charging Parties of the identities of its affiliates and how the affiliates used the funds paid to them.[6] The court remanded the case to the Board for proceedings consistent with its opinion.

On May 17, 2000, the Board advised the parties that it had accepted the court's remand and that the parties might file statements of position with respect to the issues raised by the remand. The Charging Parties and the Respondent filed statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having accepted the court's remand, we also accept its opinion as the law of the case. We therefore find, in addition to the violations previously found, that the Respondent violated Section 8(b)(1)(A) by failing to provide the Penrods and Wierzbicki with adequate information concerning its expenditures and those of its affiliates with which it shared money from dues and fees, and by failing to inform Burnham in a timely fashion of the percentage reduction in dues and fees for *Beck* objectors.

Having found that the Respondent violated Section 8(b)(1)(A) of the Act, we shall order it to cease and de-

[1] 327 NLRB 950.
[2] 487 U.S. 735 (1988).
[3] *Penrod v. NLRB*, 203 F.3d 41.
[4] Id. at 47–48.
[5] Id. at 45–46.
[6] Id. at 46–47.

sist and to take certain affirmative action necessary to effectuate the policies of the Act. Specifically, we shall order the Respondent to furnish the information required under the court's opinion, to the extent that that information has not already been provided.

With regard to the general disclosures to the objectors, we note that, although the court found the information provided by the Respondent to be inadequate, it did not specify what information was required. The court did, however, fault the Respondent for failing to provide the schedules and "breakdown" referred to in the auditor's report.[7] It also described with apparent approval the disclosure furnished by the union in *Gilpin v. American Federation of State, County & Municipal Employees*.[8] Thus, in addition to the type of information provided by the Respondent, the union in *Gilpin* furnished a list of its functional activities (such as publishing a union newsletter and adjusting grievances), stating the percentage of expenditures for each activity it considered to be chargeable or nonchargeable. The union also offered to provide, for a fee of $1.50, a copy of an arbitrator's ruling purportedly supporting the union's allocation of expenses.[9] The D.C. Circuit agreed with the Seventh Circuit that the disclosure in *Gilpin* "gave objectors a basis for objecting to the union's calculation of reduced dues."[10] Thus, although the court did not specify the information the Respondent was required to disclose, it did indicate that disclosure such as the union provided in *Gilpin* would be sufficient.

In view of the foregoing, we find it appropriate to order the Respondent to furnish the Penrods and Wierzbicki copies of the schedules and "breakdown" referred to in the auditor's report, as well as a list of its major activities and the percentages of each activity that it considers to be chargeable and nonchargeable. We shall also order the Respondent to provide the objectors a detailed explanation of how it calculated its allocation of expenditures.[11]

With regard to information concerning payments to the Respondent's affiliates, the court indicated that the Respondent was required to inform the objectors about which affiliates received funds from dues and fees and how the affiliates used the funds.[12] Accordingly, we shall order the Respondent to identify the affiliates with which it shared income from dues and fees, the amounts of income shared, and the activities of the affiliates and the percentages of each activity of each affiliate that it considers chargeable and nonchargeable. As with the general disclosures, we shall order the Respondent to provide a detailed explanation of how the affiliates' expense allocations were calculated.

We shall also, consistent with the court's opinion, order the Respondent to provide Burnham with the percentage reduction in dues and fees for objecting nonmembers. We note, however, that although the Respondent failed to furnish Burnham that information in a timely fashion, it ultimately informed him of the percentage his dues would be reduced at the same time and in the same manner as it informed Robert Penrod and Wierzbicki. There is no allegation that the substance of that disclosure was inadequate. Our order, therefore should not be construed as requiring the Respondent to provide the same information to Burnham a second time.

The Charging Parties contend that the Board should order the Respondent to notify all employees in the bargaining unit of their right not to be union members[13] and of their *Beck* rights, and also to tell them how much their fees would have been reduced for each year since 1992 had they filed *Beck* objections. The Charging Parties also argue that all employees must be given an opportunity to resign and receive retroactive refunds of dues and fees back to 1992.[14] The Respondent contends that affirmative relief should be limited to the Charging Parties.

We agree with the Respondent that unit-wide remedies are unwarranted. As the Board found in its earlier decision, there is no allegation, and no evidence, that the Respondent failed to inform anyone besides the Charging Parties of their *General Motors* or *Beck* rights.[15] Similarly, there is no allegation, and no evidence, that the Respondent failed to furnish employees with any required information since 1992. We therefore have no basis on which to require additional disclosures for any year after 1992. We note, in addition, that there is no suggestion in the court's opinion that it faulted the Board for failing to order such remedies in our original decision.

AMENDED ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters,

[7] Id. at 46.
[8] 875 F.2d 1310 (7th Cir. 1989), cited at 203 F.3d at 46.
[9] 875 F.2d at 1316.
[10] 203 F.3d at 46.
[11] There is no evidence that any arbitrator's ruling, such as that in *Gilpin*, exists in this case.
[12] 203 F.3d at 46–47.
[13] See *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).
[14] See *Rochester Mfg. Co.*, 323 NLRB 260, 262–263 (1997), affd. sub nom. *Cecil v. NLRB*, 194 F.3d 1311 (6th Cir. 1999), cert. denied 529 U.S. 1066 (2000).
[15] 327 NLRB at 955. In this regard, *Rochester Mfg. Co.*, supra, and certain other decisions relied on by the Charging Parties are distinguishable from this case.

Local 166, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to inform nonmember unit employees, when it first seeks to obligate them to pay dues and fees under a union-security clause, of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Respondent's duties as bargaining agent and to obtain a reduction in dues and fees for such activities, and of the percentage reduction in dues and fees for objectors.

(b) Failing to inform objecting nonmembers from whom it seeks to collect dues and fees of the percentage reduction in dues and fees for union activities for objectors, the basis for the calculation, and their right to challenge the figures.

(c) Charging nonmember unit employees for nonrepresentational activities after they have filed *Beck* objections.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify John P. Burnham, in writing, of his right to be and remain a nonmember and of the rights of nonmembers under *Communications Workers v. Beck* to object to paying for union activities not germane to the Respondent's duties as bargaining agent, and to obtain a reduction in dues and fees for such activities. In addition, this notice must include sufficient information to enable Burnham intelligently to decide whether to object, including the percentage reduction in dues and fees for union activities for objectors, as well as a description of any internal union procedures for filing objections.

(b) Notify Robert Penrod, Nadine Penrod, and Clement Wierzbicki, in writing, of their rights as objectors under *Communications Workers v. Beck* not to be charged for nonrepresentational activities.

(c) Provide Nadine Penrod with its 1991 statement of expenses.

(d) Provide the Penrods and Wierzbicki with the following for 1991: the schedules and "breakdown" referred to in the statement of expenses; a list of its major activities, the percentage of each activity which the Respondent considers chargeable and nonchargeable, and a detailed explanation of how it calculated its allocation of expenditures; the names of any of its affiliates with which it shared income from dues and fees, the amounts of income shared, the activities of each of the affiliates and the percentage of each activity of each affiliate that it considers chargeable and nonchargeable, and a detailed explanation of how the affiliates' expense allocations were calculated.

(e) Within 14 days after service by the Region, post at its union hall offices copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to inform nonmember unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities, and of the percentage reduction in dues and fees for objectors.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail to inform objecting nonmembers from whom we seek to collect dues and fees of the percentage reduction in dues and fees for union activities for objectors, the basis for the calculation, and their right to challenge the figures.

WE WILL NOT charge nonmember unit employees for nonrepresentational activities after they have filed *Beck* objections.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify John P. Burnham, in writing, of his right to be and remain a nonmember and of the rights of nonmembers under *Communications Workers v. Beck* to object to paying for union activities not germane to our duties as bargaining agent, and to obtain a reduction in dues and fees for such activities. In addition, this notice will include sufficient information to enable Burnham intelligently to decide whether to object, including the percentage reduction in dues and fees for union activities for objectors, as well as a description of any internal union procedures for filing objections.

WE WILL notify Robert Penrod, Nadine Penrod, and Clement Wierzbicki, in writing, of their rights as objectors under *Communications Workers v. Beck* not to be charged for nonrepresentational activities.

WE WILL provide Nadine Penrod with our 1991 statement of expenses.

WE WILL provide the Penrods and Wierzbicki with the following for 1991: the schedules and "breakdown" referred to in our statement of expenses; a list of our major activities, the percentage of each activity which we consider chargeable and nonchargeable, and a detailed explanation of how we calculated our allocation of expenditures; the names of any of our affiliates with which we shared income from dues and fees, the amounts of income shared, the activities of each of the affiliates and the percentage of each activity of each affiliate that we consider chargeable and nonchargeable, and a detailed explanation of how the affiliates' expense allocations were calculated.

INTERNATIONAL BROTHERHOOD OF TEAM-STERS, LOCAL 166, AFL–CIO